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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,135

07/07/2003

Richard E. Harris

116438

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04/24/2006

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EXAMINER

KUHNS, ALLAN R

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,135

Applicant(s)

HARRIS ET AL.

Examiner

Allan Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>070703&032304</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election with traverse of Group III, claims 28-48 in the reply filed on February 9, 2006 is acknowledged. The traversal is on the ground(s) that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one group would encompass a search for the subject matter of the remaining claims. This is not found persuasive because unlike the elected invention, one of the non-elected groups requires a search for manipulative steps and the other non-elected group requires a search for imputed article structure while the elected group of claims is directed to a composition.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 9, 2006.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franz et al. (5,334,336). Franz et al. teach or suggest the basic claimed physical foaming agent concentrate comprising a solid carrier vehicle loaded with at least one physical foaming agent that can be heated to release the at least one physical foaming agent from the vehicle. Based on the disclosure by Franz et al. at column 6, line 5 that

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thermoplastic material may be used as a binder, it would have been obvious to one of ordinary skill in the art that the concentrate of Franz et al. could be mixed with thermoplastic material.

Franz et al. teach or suggest the forming of a carrier in pellet form and the inclusion of filler material, as in claims 29-31, at column 2, lines 55-68. Franz et al. teach the inclusion of water or low boiling point hydrocarbons, as in claims 32 and 33, at column 7, lines 1-13, and suggest physical foaming agent amounts within the ranges of claims 34-36 at column 2, line 41 through column 3, line 15. Franz et al. also suggest a liquid absorbing material, as in claim 37 and carrier components, as in claims 38-41, at column 2, lines 47-68. Franz et al. also suggest use of organic or inorganic material, as in claims 42 and 43, and hydrophilic or hydrophobic material, as in claims 44 and 45, based on the wide variety of carrier materials recited at column 2, lines 47-68. The water used by Franz et al. as physical foaming agent would be released or boil at a temperature within the ranges of claims 46-48.


5. Neither JP 10-212372 nor EP 1 275 688, cited in a foreign search report, were relied upon because the disclosures of these references are considered to be at most cumulative with regard to Franz et al.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732

4-20-06